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**IN THE  
COURT OF APPEALS OF INDIANA**

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LESLIE GORDON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0512-CR-717
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Israel Cruz, Commissioner  
Cause No. 49G20-0410-FC-196360

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**SEPTEMBER 26, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBERTSON, Senior Judge**

## STATEMENT OF THE CASE

Defendant-Appellant Leslie Gordon is appealing her conviction at a bench trial of the Class C felony of possession of more than three grams of cocaine.

We affirm.

## ISSUE

Gordon states the issue as:

The State failed to prove Ms. Gordon ever actually possessed or had knowledge of the narcotics in the car and the behavior of the officers at the scene left sufficient time for the un-charged passenger, who was sitting on additional amounts of cocaine, to have placed the drugs into Ms. Gordon's seat.

## FACTS

Officer Wright received information that the driver of the Gordon vehicle was intoxicated. He followed the vehicle and subsequently stopped it because two traffic violations occurred. Gordon's movements caused the officer to believe that the vehicle needed to be searched. Gordon got out of the vehicle. The passenger, Jackie Clark, was not made to get out of the vehicle at this time. Another officer spoke to Clark while Wright watched Gordon get out of the vehicle. Wright caught a glimpse of an object that was later identified as cocaine. Wright also identified a pipe and a bag of cocaine that was partially hidden between the driver's seat and console. A second pipe was found in the console and a small "rock" of cocaine was found in the middle of the passenger's seat.

## DISCUSSION AND DECISION

Our standard of review when considering the sufficiency of the evidence is well settled. Morrison v. State, 824 N.E. 2d 734, 742 (Ind. Ct. App. 2005), *trans. denied*. We will not reweigh the evidence or assess the credibility of witnesses. *Id.* Rather, we will only consider the evidence most favorable to the verdict, together with all reasonable inferences that can be drawn therefrom. *Id.* We will uphold a conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

The issue rests on whether or not the State proved constructive possession of the cocaine by Gordon. Constructive possession occurs when someone has the intent and capability to maintain dominion and control over the item. Massey v. State, 816 N.E.2d 979, 989 (Ind. Ct. App. 2004). In order to prove constructive possession, the State must show that the defendant has both (1) the intent to maintain dominion and control and (2) the capability to maintain dominion and control over the contraband. Iddings v. State, 772 N.E.2d 1006, 1015 (Ind. Ct. App. 2004), *trans. denied*. To prove the intent element, the State must demonstrate the defendant's knowledge of the presence of the contraband, which may be inferred from either the exclusive dominion and control over the premises containing the contraband or, if the control is non-exclusive, evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. *Id.* The capability requirement is met when the State shows that the defendant is able to reduce the contraband to the defendant's personal possession. *Id.* Proof of a possessory interest in the premises in which contraband is found is adequate to show the capability to

maintain control and dominion over the items in question. Possession of contraband by the defendant need not be exclusive and it can be possessed jointly. *Id.*

Gordon points to Officer Wright's testimony that the cocaine had to belong to the driver because it would be too awkward for a passenger to put a large amount of the substance in the driver's area. We perceive this argument as asking us to assess the credibility of the witness. Gordon contends that the passenger, Clark, was left unattended for a period of time after Gordon got out of the vehicle. However, the trial testimony indicates that another officer was attending to Clark while Gordon was out of the vehicle and before the passenger was asked to get out of the vehicle. Gordon also argues that the passenger Clark was a confidential informant for the police department. The evidence at trial does not establish that fact.

The evidence does show that Gordon had control over the premises where the cocaine was found and that Gordon could reduce the contraband to her personal possession. *See Massey, id.*

### CONCLUSION

We are of the opinion, and so find, that the evidence is sufficient to sustain the verdict. Judgment affirmed.

FRIEDLANDER, J., and BARNES, J., concur.